

EIGHTY-SECOND DAY - MAY 19, 2003

LEGISLATIVE JOURNAL

**NINETY-EIGHTH LEGISLATURE
FIRST SESSION**

EIGHTY-SECOND DAY

Legislative Chamber, Lincoln, Nebraska
Monday, May 19, 2003

PRAYER

The prayer was offered by Senator Janssen.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senators Connealy and Redfield who were excused; and Senators Bromm, Brown, Landis, D. Pederson, Price, Raikes, and Schrock who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the eighty-first day was approved.

SELECT COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 283. Placed on Select File as amended.

(E & R amendment, AM7140, is printed separately and available in the Bill Room, Room 1104.)

Correctly Engrossed

The following bills were correctly engrossed: LBs 146, 513, and 754.

(Signed) Ray Mossey, Chairperson

GENERAL FILE

LEGISLATIVE BILL 43. Title read. Considered.

The Standing Committee amendment, AM1246, found on page 1348, was adopted with 31 ayes, 0 nays, 12 present and not voting, and 6 excused and

not voting.

Advanced to E & R for review with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 73. Title read. Considered.

The Standing Committee amendment, AM0304, found on page 483, was considered.

Senator Tyson renewed the Tyson-Cunningham pending amendment, AM1706, found on page 1621, to the Standing Committee amendment.

The Tyson-Cunningham amendment was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Senator Quandahl withdrew his pending amendment, AM1744, found on page 1776.

The Standing Committee amendment, as amended, was adopted with 35 ayes, 0 nays, 11 present and not voting, and 3 excused and not voting.

Advanced to E & R for review with 33 ayes, 0 nays, 13 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 73A. Title read. Considered.

SPEAKER BROMM PRESIDING

Advanced to E & R for review with 29 ayes, 0 nays, 17 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 95. Title read. Considered.

The Standing Committee amendment, AM0576, found on page 694, was considered.

Senator Maxwell renewed his pending amendment, AM1769, found on page 1890, to the Standing Committee amendment.

The Maxwell amendment was adopted with 32 ayes, 0 nays, 14 present and not voting, and 3 excused and not voting.

Senator Byars offered the following amendment to the Standing Committee amendment:

(Amendment, AM1980, is on file and available in the Clerk's Office, Room 2014.)

The Byars amendment was adopted with 31 ayes, 0 nays, 15 present and not

voting, and 3 excused and not voting.

Senator Beutler offered the following amendment to the Standing Committee amendment:

AM1982

(Amendments to AM1769)

1 1. On page 1, line 6, strike "The" and insert "A"; in
2 lines 8 and 21 strike "the" and insert "a"; in line 12 strike "the
3 parent of such parent's" and insert "at least one parent of such
4 parents"; and in line 13 strike the last "the" and insert "at
5 least one".

The Beutler amendment was adopted with 32 ayes, 0 nays, 14 present and not voting, and 3 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Advanced to E & R for review with 34 ayes, 0 nays, 12 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 655. Title read. Considered.

The Standing Committee amendment, AM1201, found on page 1188, was considered.

Senator Quandahl renewed his pending amendment, AM1506, found on page 1671, to the Standing Committee amendment.

The Quandahl amendment was adopted with 30 ayes, 0 nays, 17 present and not voting, and 2 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

Senator Engel asked unanimous consent to be excused until he returns. No objections. So ordered.

LEGISLATIVE BILL 596. Title read. Considered.

The Standing Committee amendment, AM1977, found on page 1880, was adopted with 29 ayes, 0 nays, 17 present and not voting, and 3 excused and not voting.

Advanced to E & R for review with 27 ayes, 0 nays, 19 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 643. Title read. Considered.

The Standing Committee amendment, AM1845, found on page 1744, was adopted with 27 ayes, 0 nays, 19 present and not voting, and 3 excused and not voting.

Advanced to E & R for review with 29 ayes, 0 nays, 17 present and not voting, and 3 excused and not voting.

SELECT COMMITTEE REPORTS**Enrollment and Review****Correctly Engrossed**

The following bill was correctly engrossed: LB 249.

ER9071

Enrollment and Review Change to LB 249

The following changes, required to be reported for publication in the Journal, have been made:

1. In the E & R amendments, AM7115:

a. On page 6, the matter beginning with "Any" in line 12 through "(4)" in line 13 has been struck and shown as stricken; in line 15 "(5)" has been struck, shown as stricken, and "(4)" inserted; in line 17 "(6)" has been struck, shown as stricken, and "(5)" inserted; in line 18 "(7)" has been struck, shown as stricken, and "(6)" inserted; in line 20 "(8)" has been struck, shown as stricken, and "(7)" inserted; in line 22 "(9)" has been struck, shown as stricken, and "(8)" inserted; in line 25 "(10)" has been struck, shown as stricken, and "(9)" inserted; and in line 27 "(11)" has been struck, shown as stricken, and "(10)" inserted; and

b. On page 7, line 1, "(12)" has been struck, shown as stricken, and "(11)" inserted.

(Signed) Ray Mossey, Chairperson

AMENDMENT - Print in Journal

Senators Raikes and Landis filed the following amendment to LB 622: AM1956

(Amendments to Final Reading copy)

1. Insert the following new sections:
2. "Section 1. Section 77-27,139.03, Revised Statutes
- 3 Supplement, 2002, is amended to read:
- 4 77-27,139.03. (1) State aid provided to municipalities
- 5 pursuant to sections 77-27,139.01 to 77-27,139.04 shall be
- 6 calculated by determining the average property tax levy for

7 operational purposes other than for principal and interest payments
8 on the indebtedness of all incorporated municipalities. The
9 Auditor of Public Accounts shall provide to the Department of
10 Revenue a list of the bond and nonbond tax request amounts from the
11 most recent budgets filed by incorporated municipalities. The
12 information shall be used to calculate the bond and nonbond tax
13 levies for aid purposes under this section. The auditor shall
14 provide the information to the department by February 1 each year.

15 (2) Each municipality shall receive state aid from the
16 Municipal Equalization Fund equal to (a) the product of the average
17 per capita property tax of the appropriate population group
18 multiplied by the current population of the municipality minus (b)
19 the product of the average property tax levy multiplied by the
20 certified valuation within the incorporated municipality, except
21 that a municipality shall not receive any aid under this section if
22 the calculation results in a negative number.

23 (3) If a municipal tax levy for operational purposes was
1 less than the average property tax levy in the immediately
2 preceding fiscal year, the state aid provided to such municipality
3 shall be reduced by twenty percent for each one-cent increment the
4 levy was below the average property tax levy.

5 (4) If the amount of money in the Municipal Equalization
6 Fund is less than the total amount of state aid for all
7 municipalities as required by the allocation formula in subsection
8 (2) of this section, the money in the fund shall be allocated on a
9 prorated basis to such municipalities. If the amount of money in
10 the fund is more than the total amount of state aid for
11 municipalities as required by the allocation formula, one million
12 six thousand dollars of the excess money in the fund for fiscal
13 year 2002-03 shall be distributed along with and in the same manner
14 as provided in section 77-27,137.01 and the remainder shall be
15 credited to the General Fund and the excess money in the Municipal
16 Equalization Fund for all other fiscal years shall be credited to
17 the General Fund."

18 2. On page 1, line 1, strike "section" and insert
19 "sections 77-27,139.03 and"; in line 2 after the semicolon insert
20 "to change a state aid allocation formula;"; and in line 5 strike
21 "section" and insert "sections".

22 3. On page 3, line 26, strike "section" and insert
23 "sections 77-27,139.03 and"; and in line 27 strike "is" and insert
24 "are".

25 4. Renumber the remaining sections accordingly.

GENERAL FILE

LEGISLATIVE BILL 32. Title read. Considered.

SENATOR CUDABACK PRESIDING

Senator Beutler offered the following motion:
Bracket until January 1, 2004.

The Beutler motion to bracket prevailed with 35 ayes, 0 nays, 11 present and not voting, and 3 excused and not voting.

VISITORS

Visitors to the Chamber were students from Park Avenue Christian School, Norfolk; 29 fourth-grade students and teacher from Axtell; 11 third- and fourth-grade students and teacher from Exeter/Milligan; and 60 fourth-grade students and teachers from Cottonwood Elementary School, Omaha.

RECESS

At 11:48 a.m., on a motion by Speaker Bromm, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

ROLL CALL

The roll was called and all members were present except Senators Connealy and Redfield who were excused; and Senators Johnson, Mines, and Schrock who were excused until they arrive.

REPORT OF THE EXECUTIVE BOARD

2003 Resolutions calling for an Interim Study

- LR 42 Interim study to examine the quality of services coordination provided by the Dept. of Health and Human Services to persons in Nebraska's developmental disabilities system
Health and Human Services
- LR 63 Interim study to determine whether statutes should be enacted regarding prompt payment of claims submitted to health insurers
Banking, Commerce and Insurance
- LR 81 Interim study to examine firefighter pension plans of cities of the first class
Nebraska Retirement Systems
- LR 82 Interim study to determine whether statutes should be enacted to provide for interstate review of life insurance, annuities, and disability income
Banking, Commerce and Insurance

- LR 83 Interim study to determine whether statutes should be enacted to require that the Dept. of Insurance review rates charged for personal lines property and casualty insurance on a file and use basis
Banking, Commerce and Insurance
- LR 84 Interim study to continue the study in Nebraska of the Uniform Trust Code
Banking, Commerce and Insurance
- LR 85 Interim study to determine whether the prior authorization system for Medicaid recipients who receive prescription drugs has adequate safeguards
Health and Human Services
- LR 86 Interim study to determine whether Nebraska should adopt legislation requiring use of uniform digitized law enforcement identification for all peace officers
Judiciary
- LR 87 Interim study to examine extending protections afforded to owners and sellers of grain under the Grain Dealer Act and Grain Warehouse Act
Agriculture
- LR 88 Interim study to examine implications of USDA v. United Foods with respect to federal commodity promotion programs
Agriculture
- LR 89 Interim study to examine alternative revenue sources to fund the duties and activities of the Dept. of Agriculture under the Noxious Weed Control Act
Agriculture
- LR 90 Interim study to examine residency requirements for elected county officials
Government, Military and Veterans Affairs
- LR 91 Interim study to examine granting statutory authority to counties to enact ordinances, bylaws, rules, regulations, or resolutions
Government, Military and Veterans Affairs
- LR 92 Interim study to examine Nebraska's plan for the continuity of government in periods of emergency
Select Committee
- LR 93 Interim study to examine the need for statutory and other mechanisms to protect and balance the financial interests of

persons involved in livestock sales transactions
Agriculture/Banking, Commerce and Insurance

- LR 94 Interim study to review issues relating to creation of a separate and distinct land classification for certain agricultural land
Revenue
- LR 95 Interim study to examine the value to agriculture of the permit requirement to sell or dispose of current tractor models and implications for the Nebr. Tractor Testing Laboratory
Agriculture
- LR 96 Interim study to examine a second round of deferred maintenance projects by the University of Nebraska and state colleges that could be completed
Appropriations
- LR 98 Interim study to examine the Nebraska Environmental Trust
Natural Resources
- LR 99 Interim study to examine the problems associated with disposal of used electronic equipment
Natural Resources
- LR 100 Interim study to examine the barriers to the development of renewable energy in Nebraska
Natural Resources
- LR 101 Interim study to examine the Nebraska employees' hours of work as it relates to mandatory overtime
Business and Labor
- LR 102 Interim study to examine the status of the Dept. of Natural Resources since the merger and issues regarding regulation of surface water and ground water
Natural Resources
- LR 103 Interim study to examine all provisions of the Petroleum Release Remedial Action Act
Natural Resources
- LR 104 Interim study to conduct an in-depth review of the scrap tire program
Natural Resources
- LR 105 Interim study to examine the recycling of hazardous wastes into fertilizers
Natural Resources/Agriculture

- LR 106 Interim study to review integrated pest management practices in schools and other buildings or areas where children are present
Agriculture
- LR 107 Interim study of the Nebraska Workers' Compensation Act
Business and Labor
- LR 108 Interim study of Nebraska's unemployment compensation laws relating to benefits eligibility
Business and Labor
- LR 109 Interim study of the administrative function of the Nebraska Workers' Compensation Court
Business and Labor
- LR 110 Interim study of the issues surrounding Professional Employer Organizations and employee leasing companies
Business and Labor
- LR 111 Interim study to review the collective bargaining statutes of Nebraska
Business and Labor
- LR 112 Interim study of the programs and funds administered by the Dept. of Labor
Business and Labor
- LR 113 Interim study of the Game and Parks Commission's ability to generate revenue to pay for road construction as well as programs associated with boating
Natural Resources
- LR 114 Interim study of the cost effectiveness of upgrading the Nebraska Building Energy Conservation Standard
Urban Affairs
- LR 115 Interim study of the fiscal impact and costs associated with local and long-distance phone calls made by inmates under the supervision of the Dept. of Correctional Services
Judiciary
- LR 116 Interim study to review state common carrier laws, rules and regulations
Transportation and Telecommunications
- LR 117 Interim study of the state's speed limits as well as the fine schedule and enforcement of such speed limits
Transportation and Telecommunications

- LR 118 Interim study of issues relating to unsolicited electronic mail
Transportation and Telecommunications
- LR 119 Interim study of issues that come under the jurisdiction of the
Transportation and Telecommunications Committee
Transportation and Telecommunications
- LR 120 Interim study to review state and federal common carrier laws,
rules and regulations
Transportation and Telecommunications
- LR 121 Interim study to evaluate the fee structure under the Livestock
Waste Management Act and the federal Environmental Protection
Agency Concentrated Animal Feeding Operation rules
Natural Resources
- LR 122 Interim study to review existing law and the need for legislation
regarding the predatory pricing of motor fuel
Revenue
- LR 123 Interim study to determine the feasibility of implementing the
provisions of the Master Settlement Agreement Protection Act
Revenue
- LR 124 Interim study to determine what would be the administrative costs
to the state of taking over the administration of the federal Head
Start Program
Appropriations
- LR 125 Interim study to determine what is the state's involvement in crime
victims' reparations
Judiciary
- LR 127 Interim study to examine issues under the jurisdiction of the
Government, Military and Veterans Affairs Committee
Government, Military and Veterans Affairs
- LR 128 Interim study to examine the transfer of state service annuities from
the School Retirement System to the system created under the
Class V School Employees Retirement Act
Nebraska Retirement Systems
- LR 129 Interim study to examine issues raised in LR 21CA concerning
retirement benefits for certain retired school employees
Nebraska Retirement Systems
- LR 130 Interim study to authorize an interim study of the correctional
system
Judiciary

- LR 132 Interim study to examine information available on county assessors' websites
Government, Military and Veterans Affairs
- LR 133 Interim study to convene an Economic Summit to discuss state priorities and to recommend changes to our revenue system
Executive Board
- LR 134 Interim study to examine information available on county assessors', registers of deeds', and county clerks websites
Government, Military and Veterans Affairs
- LR 135 Interim study to examine alternatives to provide a program for early retirement for long-term state employees
Nebraska Retirement Systems
- LR 136 Interim study to examine the impact of manual strangulation and other states' laws with respect to aggravated assaults
Judiciary
- LR 137 Interim study to examine the financial assurance requirements in all of the programs in the Dept. of Environmental Quality and the Dept. of Agriculture
Natural Resources/Agriculture
- LR 138 Interim study of the collective-bargaining process used by teachers' unions and school boards
Business and Labor/Education
- LR 139 Interim study of the effect of closing the Lincoln Correctional Center
Judiciary
- LR 140 Interim study of Nebraska's corporate registration tax
Revenue
- LR 141 Interim study to examine the impact of eliminating the Nebraska Forest Service
Appropriations
- LR 143 Interim study to examine ways to ensure that candidates for the office of county sheriff are qualified to assume office immediately upon election
Judiciary
- LR 144 Interim study to examine the area of need-based aid to students attending postsecondary educational institutions
Education

- LR 145 Interim study to examine the need for mental health advance directives in Nebraska
Health and Human Services
- LR 146 Interim study to review state law regarding the length of the statute of limitations for sexual offenses against children
Judiciary
- LR 147 Interim study to examine the structure and mission of the Mexican-American Commission and the Commission on Indian Affairs
Government, Military and Veterans Affairs
- LR 148 Interim study to review application of the law allowing temporary placement of certain juveniles with the Dept. of Health and Human Services
Health and Human Services
- LR 149 Interim study to review rules adopted by the Dept. of Environmental Quality for open-area livestock yards and proposed federal EPA general permit rules
Natural Resources/Agriculture/Government, Military and Veterans Affairs
- LR 150 Interim study to examine issues related to the high volume of liquor sales from Whiteclay, Nebraska, to the Oglala Sioux Tribe
General Affairs
- LR 151 Interim study of charitable gaming in Nebraska
General Affairs
- LR 152 Interim study of the current system for tracking cemetery locations in the state
General Affairs
- LR 153 Interim study to determine if there are cost savings by outsourcing purchase and maintenance of state-owned computers, network equipment, and computer peripherals
Appropriations
- LR 154 Interim study to identify legal barriers to permanency for children in foster care
Judiciary
- LR 155 Interim study to examine how child abuse and neglect and sexual abuse reports are being responded to by child protective services at the Dept. of Health and law enforcement
Health and Human Services/Judiciary

- LR 156 Interim study of options for creating a small business tax credit system
Revenue
- LR 157 Interim study of options for expanding state-income-tax-based incentives for charitable giving in Nebraska
Revenue
- LR 158 Interim study of the Nebraska Workers' Compensation Act
Business and Labor
- LR 159 Interim study to review policies and procedures necessary in establishing a comprehensive organ donor registry
Health and Human Services
- LR 160 Interim study of the overall structure of the medicaid program
Health and Human Services
- LR 161 Interim study to consider steps that can be taken to support and develop the vehicle service and towing industry
Transportation and Telecommunications
- LR 162 Interim study to examine the effectiveness of the Tax Equalization and Review Commission
Revenue
- LR 163 Interim study to gather information on the level and type of use, governance, financing, and promotion of airport facilities
Transportation and Telecommunications
- LR 164 Interim study to examine alternative funding mechanisms for the superfund site in Omaha
Natural Resources/Health and Human Resources
- LR 165 Interim study to review the implementation of LB 626, regarding services contracts by agencies and the Dept. of Administrative Services
Government, Military and Veterans Affairs
- LR 166 Interim study to examine taxing all media advertising
Revenue
- LR 167 Interim study to continue work done by the Revenue Committee comparing Nebraska's tax structure to that of other states
Revenue
- LR 168 Interim study to review statutorily authorizing drug court program structures
Judiciary

- LR 169 Interim study to review topics relating to the State DNA Data Base
Judiciary
- LR 170 Interim study to determine the appropriate legislative means that
should be employed to lower the age of majority
Judiciary
- LR 171 Interim study to determine whether passage of LB 46, regarding
corrections, probation, and parole, will require further legislative
response
Judiciary
- LR 172 Interim study to examine the issue of controlled substances,
specifically relating to methamphetamines
Judiciary
- LR 173 Interim study to consider steps that can be taken to enhance,
support, and develop the recreational value of Nebraska's lakes and
rivers
Natural Resources
- LR 174 Interim study to review public higher education financing
Task Force
- LR 175 Interim study to determine the extent to which discrimination,
based on sexual orientation, exists in employment
Business and Labor
- LR 176 Interim study to determine the extent to which discrimination,
based on sexual orientation, exists in the rental of an apartment or
the sale of a house
Judiciary
- LR 177 Interim study of the role of vocational rehabilitation specialists of
the Workers' Compensation Court in overseeing private vocational
rehabilitation counselors
Business and Labor
- LR 178 Interim study of the laws regarding immigration and employment
of noncitizens
Business and Labor
- LR 179 Interim study to convene a task force to examine the role and
mission of licensed assisted-living facilities serving Nebraska's
elderly
Health and Human Services
- LR 180 Interim study to review the organizational structure of elementary

and secondary education
Education

- LR 181 Interim study to examine the application of motor carriers' rates to transportation services purchased by the Health and Human services system
Transportation and Telecommunications
- LR 182 Interim study to examine the administrative and personnel structure of the Health and Human Services System
Health and Human Services
- LR 183 Interim study to provide information on patterns of spending by government agencies
Appropriations
- LR 184 Interim study to examine the state's obligation to provide for free instruction for persons between the ages of five and twenty-one years with respect to cocurricular and extracurricular activities
Education
- LR 185 Interim study to determine the extent of the problem of domestic violence
Judiciary
- LR 186 Interim study to examine the causes and effects of obesity on young people
Health and Human Services
- LR 187 Interim study to examine health provider networks that are owned by certain health providers and whether the Dept. of Insurance should be authorized to regulate such networks
Banking, Commerce and Insurance

(Signed) Pat Engel, Chairperson
Legislative Council
Executive Board

ATTORNEY GENERAL'S OPINION

Opinion # 03016

DATE: May 19, 2003

SUBJECT: Federal Rural Economic Development Loan And Grant Program; Constitutionality Of Participation In The Grant Portion Of That Program By Public Power Districts Under Art. XIII, § 3 Of The Nebraska Constitution.

REQUESTED BY: Senator Jim Jones
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

In our Op. Att'y Gen. No. 00042 (December 5, 2000), we considered the constitutionality of zero-interest loans by public power districts for rural economic development under the federal Rural Economic Development Loan and Grant Program ("REDLG"). That opinion, which was prepared at your request, concerned the application of art. XIII, § 3 of the Nebraska Constitution to the loans in question. We ultimately concluded that zero-interest loans by a Nebraska public power district for economic development purposes under the REDLG program would involve a violation of art. XIII, § 3.

You have now requested a second opinion from us regarding the REDLG program. In this instance, you are concerned about the grant portion of that program which was not the subject of your previous inquiry. We understand that, depending upon our response, you are considering introduction of corrective legislation or a constitutional amendment to allow Nebraska public power districts to participate in the grants.

The federal "cushion of credit payments program," set out at 7 U.S.C. § 40c and 7 CFR, Subpart B, §§ 1703.10 through 1703.68, is a federal program whereby Rural Electrification Act borrowers can obtain federal loans and grants for rural economic development purposes from the Rural Utilities Service ("RUS"). You describe the grant program in the following terms:

The grant is made to the PPD [public power district], which is required to contribute 20 percent of the amount of the grant to the fund, and the PPD sets up a revolving loan program to fund eligible economic development projects.

Unlike the zero-interest loans which were the subject of our earlier opinion, it does not appear that public power districts are required to pay back amounts provided to them under the REDLG grant program. However, public power districts which do receive REDLG grant funds must follow various RUS requirements and procedures in making loans under a grant.

We will quote extensively from our Opinion No. 00042, since it has direct application to the present question you have presented. In that opinion, we began with a general discussion of art. XIII, § 3:

Art XIII, § 3 of the Nebraska Constitution provides that "[t]he credit of the state shall never be given or loaned in aid of any individual, association, or corporation" The purpose of that section is to

prevent the state or any of its political subdivisions from extending the state's credit to private enterprise. *Callan v. Balka*, 248 Neb. 469, 536 N.W.2d 47 (1995). "It is designed to prohibit the state from acting as a surety or guarantor of the debt of another." *Haman v. Marsh*, 237 Neb. 699, 718, 467 N.W.2d 836, 850 (1991). It applies to the State and all of its political subdivisions. *State ex rel. Beck v. City of York*, 164 Neb. 223, 82 N.W.2d 269 (1957).

The Nebraska Supreme Court has established a three-part test for determining whether an expenditure violates art. XIII, § 3 of the Nebraska Constitution. To establish a violation of that constitutional provision, it must be shown that (1) the credit of the state (2) is given or loaned (3) in aid of any individual, association, or corporation. *Callan*, 248 Neb. at 476, 536 N.W.2d at 51; *Haman*, 237 Neb. at 719, 467 N.W.2d at 850. In that context, there is a distinction between the loaning of state funds and the loaning of the state's credit. The loan of state funds places the state in the position of a creditor, and the loan of state's credit places the state in the position of debtor. *Callan*, 248 Neb. at 476, 536 N.W.2d at 51; *Haman*, 237 Neb. at 719, 720, 467 N.W.2d at 850. In addition, the prohibition against the pledge of the state's credit does not hinge upon whether the expenditure at issue achieves a "public purpose" when the pledge benefits a private individual, association or corporation. *Haman*, 237 Neb. at 722, 467 N.W.2d at 852. Instead, the key focus of art. XIII, § 3 is whether the state stands as a creditor through the expenditure of its funds, or as a debtor by the extension of credit in the interest of private parties. *Callan*, 248 Neb. at 479, 536 N.W.2d at 53; *Haman*, 237 Neb. at 722, 718, 467 N.W.2d at 852. (1991).

Op. Att'y Gen. No. 00042 (December 5, 2000) at 3. We then discussed application of the credit of the state aspect of art. XIII, § 3 to the zero-interest loan program at issue in that opinion:

In the present instance, we understand that the focus of your inquiry is the REDLG "pass-through" loan program, whereby the Rural Utilities Service of USDA (RUS) would make a zero-interest loan to a public power district in Nebraska for rural economic development purposes. That power district would then, in turn, make a zero-interest loan of the funds from RUS to another entity that would ultimately own or undertake a private development project using the proceeds of the loan. Under such a scenario, RUS could require the public power district, as borrower, to provide it with an irrevocable letter of credit or other guarantee satisfactory to RUS that the loan would be repaid. 7 CFR, Subpart B, § 1703.29 (d). With respect to your first question to us, you wish to know, in essence, if removing the letter of credit requirement or other guarantee by the power district from the zero-interest loan process would cure any potential problems with that process under art. XIII, § 3. For the reasons discussed below, we do not believe that removing the letter of credit requirement would bring about

the cure which you seek.

As noted above, the initial element of the test for a proposal under art XIII, § 3 requires a determination as to whether the proposal involves lending the credit of the state. In regard to that determination, the key issue is whether the state or the governmental subdivision involved stands as a creditor in the process through the expenditure of its funds, or as a debtor in the process by the extension of credit in the interest of private parties. One aspect of the REDLG pass-through loan program would involve a loan from a public power district to another entity that would ultimately own or undertake a private development project using the proceeds of that loan. The power district would stand as a creditor in that transaction, since it would loan funds to the private entity. As a result, that portion of the program does not appear to involve lending the credit of the state.

On the other hand, the pass-through loan program, as outlined in your initial question, requires the public power district to borrow funds from RUS in order to loan those funds to the private entity. That loan from RUS to the power district would necessitate a letter of agreement and any additional legal documentation from the power district which RUS deemed appropriate, including loan agreements, promissory notes, security instruments, certifications or legal opinions. 7 CFR, Subpart B, § 1703.59 (a). In addition, the repayment terms of the loan from RUS to the public power district would have to equal the terms of the loan from the power district to the private borrower, and the power district would be required to make payments on the zero-interest loan in accordance with the legal documents executed by the power district. 7 CFR, Subpart B, §§ 1703.29 (a) and 1703.61 (a). Presumably, the power district would also have to pay back its zero interest loan to RUS even if the private pass-through borrower defaulted in its duty to make payments to the power district.

It appears to us that the second aspect of the pass-through loan program, where the public power district borrows money from RUS and then must repay that loan, implicates the credit of the state. In that latter situation, the power district stands as a debtor through the extension of its credit, rather than as a creditor through the loan of public funds. Consequently, the pass-through loan portion of the REDLG program meets the first element of an unconstitutional extension of credit under art. XIII, § 3.

Op. Att'y Gen. No. 00042 (December 5, 2000) at 3-5.

In the present instance, we understand that a public power district which participates in the REDLG grant program does not borrow the funds which it uses for zero-interest loans from RUS, and that it has no obligation to repay those monies to RUS. Instead, the public power district receives grant monies from RUS which it uses, along with its own monies, to fund loans to

borrowers for economic development purposes in accordance with the applicable federal regulations. Under those circumstances, it seems to us that the public power district would not stand as a debtor to RUS, and participation in the REDLG grant program would not involve lending the credit of the state under art. XIII, § 3. For that reason, we believe that participation in the REDLG grant program is permissible for a public power district under that constitutional provision.

In your opinion request letter, you also ask us to address any other issues regarding public power districts and the REDLG grant program presented by the materials you provided to us. In that regard, you gave us a copy of an opinion prepared by private counsel concerning public power district participation in the REDLG grant program. That opinion discusses the issue of whether public power districts in Nebraska currently have authority to use district monies to contribute 20% of the loan amount to borrowers under a REDLG grant.

We have reviewed the opinion prepared by private counsel which you provided to us, and we agree with the analysis stated therein. In essence, that opinion indicates that public power districts in Nebraska do have implied authority under the applicable statutes and cases to use district monies to contribute 20% of the funding for loans made under the REDLG grant program. However, that the authority for public power districts to contribute their own monies for REDLG loans is implied under the existing statutes, and you may wish to consider additional legislation to explicitly give public power districts such authority if you feel that such legislation is warranted.

Sincerely yours,
JON BRUNING
Attorney General
(Signed) Dale A. Comer
Assistant Attorney General

cc. Patrick J. O'Donnell
Clerk of the Legislature
05-169-21

MESSAGE FROM THE GOVERNOR

May 16, 2003

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm and Senators:

Contingent upon your approval, the following individuals have been

reappointed to the Boiler Safety Code Advisory Board.

APPOINTEES:

Thomas Hix, 1717 S 155th Ave, Omaha, NE 68144

Robert Hill, 12972 Redman Circle, Omaha, NE 68164

William Yates, 10029 State St, Omaha, NE 68122

The aforementioned names are respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

SELECT FILE

LEGISLATIVE BILL 760. E & R amendment, AM7139, found on page 1879, was adopted.

Senator Beutler offered the following amendment:

FA1365

Strike Section 1.

Senator Beutler withdrew his amendment.

Senator Beutler offered the following amendment:

AM2004

(Amendments to AM1946)

- 1 1. On page 1, line 6, after "shall" insert "only"; and
- 2 strike beginning with "It" in line 10 through the period in line
- 3 14.
- 4 2. On page 10, strike beginning with the first "the" in
- 5 line 14 through "including" in line 15.

The Beutler amendment was adopted with 30 ayes, 0 nays, 14 present and not voting, and 5 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 760A. E & R amendment, AM7138, found on page 1879, was adopted.

Senator Brashear offered the following amendment:

AM1976

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 "Section 1. There is hereby appropriated (1) \$360,000
- 4 from the Supreme Court Education Fund for FY2003-04 and (2)

5 \$360,000 from the Supreme Court Education Fund for FY2004-05 to the
6 Supreme Court, for Program 52, to aid in carrying out the
7 provisions of Legislative Bill 760, Ninety-eighth Legislature,
8 First Session, 2003.

9 Sec. 2. There is hereby appropriated (1) \$270,000 from
10 the Dispute Resolution Cash Fund for FY2003-04 and (2) \$270,000
11 from the Dispute Resolution Cash Fund for FY2004-05 to the Supreme
12 Court, for Program 52, to aid in carrying out the provisions of
13 Legislative Bill 760, Ninety-eighth Legislature, First Session,
14 2003.

15 Sec. 3. The General Fund appropriation to the Supreme
16 Court, for Program 52, is reduced by \$300,000 for FY2003-04 and the
17 General Fund state aid earmark for FY2003-04 is reduced by
18 \$248,400. The General Fund appropriation to the Supreme Court for
19 Program 52, is reduced by \$75,000 for FY2004-05.

20 Sec. 4. There is hereby appropriated (1) \$748,788 from
21 the Commission on Public Advocacy Operations Cash Fund for
22 FY2003-04 and (2) \$765,535 from the Commission on Public Advocacy
23 Operations Cash Fund for FY2004-05 to the Commission on Public
24 Advocacy, for Program 425, to aid in carrying out the provisions of
1 Legislative Bill 760, Ninety-eighth Legislature, First Session,
2 2003.

3 Total expenditures for permanent and temporary salaries
4 and per diems from funds appropriated in this section shall not
5 exceed \$153,960 for FY2003-04 or \$157,040 for FY2004-05.

6 Sec. 5. The General Fund appropriation to the Commission
7 on Public Advocacy, for Program 425, is reduced by \$537,721 for
8 FY2003-04 and the General Fund appropriation to the Commission on
9 Public Advocacy, for Program 425, is reduced by \$554,468 for
10 FY2004-05.

11 Sec. 6. Since an emergency exists, this act takes effect
12 when passed and approved according to law."

The Brashear amendment was adopted with 28 ayes, 0 nays, 16 present and
not voting, and 5 excused and not voting.

Advanced to E & R for engrossment.

AMENDMENT - Print in Journal

Senator Chambers filed the following amendment to LB 320:
AM2003

(Amendments to Final Reading copy)

1 1. Insert the following new sections:

2 "Sec. 2. Section 24-708, Revised Statutes Supplement,
3 2002, as amended by section 16, Legislative Bill 451, Ninety-eighth
4 Legislature, First Session, 2003, is amended to read:

5 24-708. (1) ~~Any~~ Except as provided in section 24-721, a
6 judge may retire upon reaching the age of sixty-five and upon

7 making application to the board. Upon retiring each such judge
8 shall receive retirement annuities as provided in section 24-710.

9 (2) Except as provided in section 24-721, a judge may
10 retire upon the attainment of age fifty-five and elect to receive a
11 reduced monthly retirement income in lieu of a deferred vested
12 annuity. The judge may request that the reduced monthly retirement
13 income commence at any date, beginning on the first day of the
14 month following the actual retirement date and ending on the normal
15 retirement date. The amount of the monthly retirement income shall
16 be calculated based on the length of creditable service and average
17 compensation at the actual retirement date and shall be reduced
18 when the payments commence prior to the normal retirement date to
19 an amount that is actuarially equivalent to the deferred vested
20 annuity payable at the normal retirement date.

21 (3) Payment of any benefit provided under the Judges
22 Retirement Act may not be deferred later than April 1 of the year
23 following the year in which the judge has both attained at least
1 age seventy and one-half years and terminated his or her employment
2 as a judge.

3 (4) The effective date of retirement payments shall be
4 the first day of the month following (a) the date a member
5 qualifies for retirement as provided in this section or (b) the
6 date upon which a member's request for retirement is received on an
7 application form provided by the retirement system, whichever is
8 later. An application may be filed no more than ninety days in
9 advance of qualifying for retirement.

10 (5) The board shall make reasonable efforts to locate the
11 member or the member's beneficiary and distribute benefits by the
12 required beginning date as specified by section 401(a)(9) of the
13 Internal Revenue Code and the regulations issued thereunder. If
14 the board is unable to make such a distribution, the benefit shall
15 be distributed pursuant to the Uniform Disposition of Unclaimed
16 Property Act and no amounts may be applied to increase the benefits
17 any member would otherwise receive under the Judges Retirement Act.

18 Sec. 3. Section 24-721, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 24-721. Any citizen of the State of Nebraska shall have
21 the right at all times to complain to the Commission on Judicial
22 Qualifications with reference to the acts, activities, or
23 qualifications of any Justice or judge of the Supreme Court or
24 judge of any of the courts of the State of Nebraska or to request
25 that the commission consider the qualifications of any Justice or
26 judge of the Supreme Court or judge of any of the courts of the
27 State of Nebraska. Upon receipt of any such complaint or request,
1 the commission shall make such investigation as it determines to be
2 necessary. The commission shall have the right to subpoena
3 witnesses; to hold hearings; to require the Justice or judge to
4 submit to physical or mental examination by medical experts; to
5 appoint special masters to conduct hearings; to make independent

6 investigations, either by members of the commission or by special
7 investigators employed by the commission; to hold confidential
8 prehearing proceedings with the person or persons filing the
9 complaint or request, or with his or her or their agents or
10 attorneys; and to hold confidential prehearing proceedings with the
11 judge or Justice involved in the complaint or request. If the
12 commission finds probable cause for the existence of any of the
13 grounds for disciplinary action or retirement specified in section
14 24-722, it shall privately reprimand the Justice or judge or order
15 a formal open hearing to be held before it concerning the
16 reprimand, discipline, censure, suspension, removal, or retirement
17 of such Justice or judge. A judge who receives official notice of
18 a complaint or request pursuant to this section shall not be
19 allowed to retire pursuant to the Judges Retirement Act until the
20 matter is resolved by the commission or the Supreme Court, if the
21 commission recommends action by the court. If a hearing is
22 ordered, the commission shall advise the judge or Justice involved,
23 in writing, of the specific charges which have been made and
24 supported, substantiated, or revealed by the independent
25 investigation of the commission. The judge or Justice shall be
26 given reasonable time in which to formally answer such charges in
27 writing and the matter shall then be set for formal open hearing,
1 at which time the commission shall cause the testimony and the
2 documentary evidence relating to the charges to be produced and
3 recorded in such manner as the commission shall determine to be
4 advisable, giving the judge or Justice involved and his or her
5 attorney a full opportunity to question and cross-examine the
6 witnesses and evidence so produced. The judge or Justice shall
7 have an opportunity to produce at such hearing, testimony,
8 evidence, and documents relating to the charges involved;
9 thereafter any rebuttal evidence may be produced. In the
10 alternative or in addition, the commission may request the Supreme
11 Court to appoint one or more special masters who shall be judges of
12 courts of record to hold a formal open hearing to take evidence in
13 any such matter, and to report to the commission. Whenever any
14 person shall refuse to testify or to produce books, papers, or
15 other evidence when required to do so in any hearing held before
16 the Commission on Judicial Qualifications or before a special
17 master or masters appointed under the provisions of this section
18 for the reason that the testimony or evidence required of him or
19 her may tend to incriminate him or her or subject him or her to a
20 forfeiture or penalty, he or she may nevertheless be compelled to
21 testify or produce such evidence by order of the Commission on
22 Judicial Qualifications or special master or masters on motion of
23 counsel to the commission. No person who testifies or produces
24 evidence in obedience to the command of the commission or special
25 master or masters in such case shall be liable to any forfeiture or
26 penalty for or on account of any transaction, matter, or thing
27 concerning or arising from that as to which he or she may so

1 testify or produce evidence, nor shall such testimony or evidence
2 be used directly or indirectly in any proceedings against him or
3 her, except that no person shall be exempt from prosecution and
4 punishment for perjury or contempt committed in so testifying. The
5 requirement to testify or produce evidence shall not apply when
6 such person proves the real and substantial danger of a prosecution
7 against him or her in another jurisdiction based on the admissions
8 to be made by him or her in this state. The commission or special
9 master or masters shall have power to punish for contempt for any
10 action specified in section 25-2121. If, after formal open
11 hearing, or after considering the record and report of the masters,
12 the commission finds that the charges are established by clear and
13 convincing evidence, it shall recommend to the Supreme Court that
14 the Justice or judge of the Supreme Court or other judge involved
15 shall be reprimanded, disciplined, censured, suspended without pay
16 for a definite period of time not to exceed six months, removed, or
17 retired as the case may be. All hearings before the commission and
18 all proceedings before masters and before the Supreme Court shall
19 be conducted in accordance with rules promulgated or to be
20 promulgated by the Supreme Court."

21 2. On page 1, strike beginning with "Judges" in line 1
22 through line 4 and insert "judges; to amend section 24-721, Reissue
23 Revised Statutes of Nebraska, section 24-703, Revised Statutes
24 Supplement, 2002, and section 24-708, Revised Statutes Supplement,
25 2002, as amended by section 16, Legislative Bill 451, Ninety-eighth
26 Legislature, First Session, 2003; to change provisions relating to
27 retirement eligibility, contributions, and fees; to repeal the
1 original sections; and to declare an emergency."

2 3. Renumber the remaining sections and correct the
3 repealer accordingly.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Hill, Robert - Boiler Safety Code Advisory Board - Business and Labor

Hix, Thomas - Boiler Safety Code Advisory Board - Business and Labor

Yates, William - Boiler Safety Code Advisory Board - Business and Labor

(Signed) Pat Engel, Chairperson
Legislative Council
Executive Board

SELECT FILE

LEGISLATIVE BILL 209. E & R amendment, AM7089, found on page

958, was adopted.

Senator Synowiecki withdrew his pending amendment, AM0744, found on page 849.

Senator Chambers renewed his pending amendment, FA1201, found on page 937.

Senator Chambers withdrew his amendment.

Senator Chambers renewed his pending amendment, FA1202, found on page 937.

Senator Chambers withdrew his amendment.

Senator Chambers withdrew his pending amendment, FA1203, found on page 937.

Senator Bromm renewed his pending amendment, AM1346, found on page 1408.

The Bromm amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Senator Engel asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Bromm renewed his pending amendment, AM1499, found on page 1409.

The Bromm amendment was adopted with 26 ayes, 0 nays, 18 present and not voting, and 5 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 608. E & R amendment, AM7090, printed separately and referred to on page 1075, was adopted.

Senator Bromm withdrew the Bromm-Mines pending amendment, AM0845, found on page 937.

Senator Landis withdrew his pending amendment, AM1076, found on page 1112.

Senator Thompson withdrew the Thompson-Synowiecki pending amendment, AM1145, found on page 1149.

Senator Beutler offered the following amendment:
(Amendment, AM1136, is on file and available in the Clerk's Office, Room

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2014.)

Senator Beutler withdrew his amendment.

Pending.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 95A. Introduced by Byars, 30.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 95, Ninety-eighth Legislature, First Session, 2003.

LEGISLATIVE BILL 209A. Introduced by Bromm, 23.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 209, Ninety-eighth Legislature, First Session, 2003; and to declare an emergency.

MOTION - Print in Journal

Senator Schimek filed the following motion:
Withdraw LR 132.

STANDING COMMITTEE REPORT **Health and Human Services**

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Nebraska Board of Health
Pamela List

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Johnson, and Stuthman. Nay: None. Absent: None.

(Signed) Jim Jensen, Chairperson

SELECT FILE

LEGISLATIVE BILL 608. Senators Bromm, Jones, Landis, and Erdman offered the following amendment:
AM2005

(Amendments to E & R amendments, AM7090)

- 1 1. Strike the original sections and all amendments

2 thereto and insert the following new sections:

3 "Section 1. Section 77-27,187, Revised Statutes

4 Supplement, 2002, is amended to read:

5 77-27,187. Sections 77-27,187 to 77-27,195 and section 3
6 of this act shall be known and may be cited as the Employment
7 Expansion and Investment Incentive Act.

8 Sec. 2. Section 77-27,187.01, Revised Statutes

9 Supplement, 2002, is amended to read:

10 77-27,187.01. For purposes of the Employment Expansion
11 and Investment Incentive Act, unless the context otherwise
12 requires:

13 (1) Any term has the same meaning as used in the Nebraska
14 Revenue Act of 1967;

15 (2) Equivalent Nebraska employees means the number of
16 Nebraska employees computed by dividing the total hours paid in a
17 year to Nebraska employees by the product of forty times the number
18 of weeks in a year;

19 (3) Nebraska employee means an individual who is either a
20 resident or partial-year resident of Nebraska;

21 (4) Qualified employee leasing company means a company
22 which places all employees of a client-lessee on its payroll and
23 leases such employees to the client-lessee on an ongoing basis for
1 a fee and, by written agreement between the employee leasing
2 company and a client-lessee, grants to the client-lessee input into
3 the hiring and firing of the employees leased to the client-lessee;

4 (5) Related taxpayers includes any corporations that are
5 part of a unitary business under the Nebraska Revenue Act of 1967
6 but are not part of the same corporate taxpayer, any business
7 entities that are not corporations but which would be a part of the
8 unitary business if they were corporations, and any business
9 entities if at least fifty percent of such entities are owned by
10 the same persons or related taxpayers and family members as defined
11 in the ownership attribution rules of the Internal Revenue Code of
12 1986, as amended;

13 (6) Taxpayer means a corporate taxpayer or other person
14 subject to either an income tax imposed by the Nebraska Revenue Act
15 of 1967 or a franchise tax under Chapter 77, article 38, ~~or exempt~~
16 ~~from such taxes under section 521 of the Internal Revenue Code of~~
17 ~~1986, as amended~~, or a partnership, limited liability company, S
18 corporation, or joint venture when all of the partners,
19 shareholders, or members are subject to or exempt from such taxes;
20 and

21 (7) Year means the taxable year of the taxpayer.

22 Sec. 3. (1) For tax years beginning or deemed to begin
23 on or after January 1, 2004, under the Internal Revenue Code of
24 1986, as amended, in order to earn the incentives set forth in the
25 Employment Expansion and Investment Incentive Act, the taxpayer
26 shall file an application for an agreement with the Tax
27 Commissioner.

- 1 (2) The application shall contain:
2 (a) A written statement describing the full expected
3 employment and investment for a qualified business in this state;
4 (b) Sufficient documents, plans, and specifications as
5 required by the Tax Commissioner to support the plan and to define
6 a project;
7 (c) An application fee of five hundred dollars. The fee
8 shall be remitted to the State Treasurer for credit to the
9 Employment Expansion and Investment Incentive Fund, which fund is
10 hereby created. Any money in the fund available for investment
11 shall be invested by the state investment officer pursuant to the
12 Nebraska Capital Expansion Act and the Nebraska State Funds
13 Investment Act. The application and all supporting information
14 shall be confidential except for the name of the taxpayer, the
15 location of the project, the amounts of increased employment and
16 investment, and the maximum amount of credits that may be earned as
17 a result of the project.
18 (3) Once satisfied that the plan in the application
19 defines a project that meets the investment, employment, and wage
20 requirements and is located in an eligible county, and that these
21 requirements will be reached within the required time period, the
22 Tax Commissioner shall approve the application and authorize the
23 total amount of credits expected to be earned as a result of the
24 project. The Tax Commissioner shall not approve further
25 applications once the expected credits from the approved projects
26 total two million five hundred thousand dollars in each of fiscal
27 years 2004-05 and 2005-06 and three million dollars in fiscal year
1 2006-07 and each fiscal year thereafter. Four hundred dollars of
2 the application fee shall be refunded to the applicant if the
3 application is not approved because the expected credits from
4 approved projects exceed such amounts. Applications for benefits
5 shall be considered in the order in which they are received.
6 (4) After approval, the taxpayer and the Tax Commissioner
7 shall enter into a written agreement. The taxpayer shall agree to
8 complete the project, and the Tax Commissioner, on behalf of the
9 State of Nebraska, shall designate the approved plans of the
10 taxpayer as a project and, in consideration of the taxpayer's
11 agreement, agree to allow the taxpayer to use the incentives
12 contained in the Employment Expansion and Investment Incentive Act
13 up to the total amount that were authorized by the Tax Commissioner
14 at the time of approval. The application, and all supporting
15 documentation, to the extent approved, shall be considered a part
16 of the agreement. The agreement shall state:
17 (a) The levels of employment and investment required by
18 the act for the project;
19 (b) The time period under the act in which the required
20 level must be met;
21 (c) The documentation the taxpayer will need to supply
22 when claiming an incentive under the act;

23 (d) The date the application was filed; and

24 (e) The maximum amount of credits authorized.

25 Sec. 4. Section 77-27,188, Revised Statutes Supplement,
26 2002, is amended to read:

27 77-27,188. (1)~~(a)~~ A refundable credit against the taxes

1 imposed by the Nebraska Revenue Act of 1967 shall be allowed to any
2 taxpayer who has an approved application under the Employment
3 Expansion and Investment Incentive Act, who is engaged in a
4 qualifying business as described in section 77-27,189, and who
5 after the operative date of this section:

6 (a) Increases ~~increases~~ the employment and investment of
7 such business in ~~this state by two~~ any county in this state with a
8 population of less than twenty-five thousand inhabitants, according
9 to the most recent federal decennial census or in any designated
10 enterprise zone pursuant to 42 U.S.C. 11501 or the Enterprise Zone
11 Act;

12 (b) Increases employment by five new equivalent Nebraska
13 employees and who makes an increased investment in this state of at
14 least ~~seventy five two hundred fifty~~ thousand dollars ~~during a~~
15 taxable year prior to the end of the first taxable year after the
16 year in which the application was submitted; and

17 (c) Pays a minimum qualifying wage of eight dollars and
18 twenty-five cents per hour to the new equivalent Nebraska employees
19 for which tax credits are sought under the Employment Expansion and
20 Investment Incentive Act. The Department of Revenue shall adjust
21 the minimum qualifying wages required for applications filed after
22 January 1, 2004, and each January 1 thereafter, as follows: The
23 current rural Nebraska average weekly wage shall be divided by the
24 rural Nebraska average weekly wage for 2003; and the result shall
25 be multiplied by the eight dollars and twenty-five cents minimum
26 qualifying wage for 2003 and rounded to the nearest one cent. The
27 amount of increase or decrease in the minimum qualifying wages for

1 any year shall be the cumulative change in the rural Nebraska
2 average weekly wage since 2003. For purposes of this subsection,
3 rural Nebraska average weekly wage means the most recent average
4 weekly wage paid by all employers in all counties with a population
5 of less than twenty-five thousand inhabitants as reported by
6 October 1 by the Department of Labor.

7 (b) Any taxpayer who has been allowed a credit under
8 subdivision (1)(a) of this section during the preceding five
9 taxable years, not counting carryovers, shall be allowed a credit
10 for an increase in employment in this state by two new equivalent
11 Nebraska employees.

12 (2) Except as provided in subsection (3) of this section,
13 the The amount of the credit shall be ~~one thousand five hundred~~
14 three thousand dollars for each new equivalent Nebraska employee
15 and ~~one thousand two thousand seven hundred fifty~~ dollars for each
16 seventy five ~~fifty~~ thousand dollars of increased investment.

17 (3) For any taxpayer described in subdivision (1)(a) of

18 this section which is also located within the boundaries of an
19 enterprise zone as defined and designated by the Department of
20 Economic Development pursuant to the Enterprise Zone Act, the
21 amount of the credit shall be:

22 (a) Four thousand five hundred dollars for each new
23 equivalent Nebraska employee and three thousand dollars for each
24 seventy-five thousand dollars of increased investment if at least
25 fifty percent of the new equivalent Nebraska employees of the
26 taxpayer reside within the boundaries of the enterprise zone; or

27 (b) Four thousand five hundred dollars for each new
1 equivalent Nebraska employee residing within the boundaries of the
2 enterprise zone, one thousand five hundred dollars for each new
3 equivalent Nebraska employee not residing within the boundaries of
4 the enterprise zone, and one thousand dollars for each seventy-five
5 thousand dollars of increased investment if less than fifty percent
6 of the new equivalent Nebraska employees of the taxpayer reside
7 within the boundaries of the enterprise zone.

8 The credit allowed to a taxpayer pursuant to this
9 subsection shall not exceed seventy-five thousand dollars in any
10 one tax year.

11 For purposes of this subdivision, employees residing
12 within the boundaries of an enterprise zone shall be construed to
13 mean employees residing within a county in which an enterprise zone
14 is located when the enterprise zone is not located in a city of the
15 primary or metropolitan class.

16 For purposes of this subdivision, an employee residing
17 within the enterprise zone shall mean an individual who is
18 domiciled within the enterprise zone for the entire pay period.

19 (4) The credit shall be applied as provided in section
20 77-27,188.01.

21 (5) Any taxpayer who has qualified for a credit in the
22 amount set out in subsection (3) of this section may elect to
23 receive either the amount as calculated pursuant to subsection (2)
24 or (3) of this section.

25 (6) An employee of a qualified employee leasing company
26 shall be considered to be an employee of the client-lessee for
27 purposes of this section if the employee performs services for the
1 client-lessee. A qualified employee leasing company shall provide
2 the Department of Revenue access to the records of employees leased
3 to the client-lessee.

4 (4) The credit shall not exceed the amounts set out in
5 the application and approved by the Tax Commissioner.

6 (5)(a) If a taxpayer who receives tax credits creates
7 fewer jobs or less investment than approved in the project
8 agreement, the taxpayer shall repay the tax credits as provided in
9 this subsection.

10 (b) If less than seventy-five percent of the proposed
11 jobs in the project agreement are created, one hundred percent of
12 the job creation tax credits shall be repaid. If seventy-five

13 percent or more of the proposed jobs in the project agreement are
14 created, no repayment of the job creation tax credits is necessary.

15 (c) If less than seventy-five percent of the proposed
16 investment in the project agreement is created, one hundred percent
17 of the investment tax credits shall be repaid. If seventy-five
18 percent or more of the proposed investment in the project agreement
19 is created, no payment of the investment tax credits is necessary.

20 Sec. 5. Section 77-27,188.01, Reissue Revised Statutes
21 of Nebraska, is amended to read:

22 77-27,188.01. (1) The credit allowed under section
23 77-27,188 may be used to obtain a refund of state sales and use
24 taxes paid or against the income tax liability of the taxpayer or
25 may be used as a refundable credit claimed on an income tax return
26 of the taxpayer. The return need not reflect any income tax
27 liability owed by the taxpayer.

1 (2) A claim for the credit may be filed quarterly for
2 refund of the state sales and use taxes paid, either directly or
3 indirectly, after the filing of the income tax return for the
4 taxable year in which the credit was first allowed.

5 (3) The credit may be used to obtain a refund of state
6 sales and use taxes paid before the end of the taxable year for
7 which the credit was allowed, except that the amount refunded under
8 this subsection shall not exceed the amount of the state sales and
9 use taxes paid, either directly or indirectly, by the taxpayer on
10 the qualifying investment.

11 (4) For purposes of subsections (2) and (3) of this
12 section, the taxpayer shall be deemed to have paid indirectly any
13 state sales or use taxes paid by a contractor on property annexed
14 to an improvement to real estate built for the taxpayer. The
15 contractor shall certify to the taxpayer the amount of the Nebraska
16 state sales and use taxes paid on the materials, or the taxpayer,
17 with the permission of the Tax Commissioner and a certification
18 from the contractor that Nebraska state sales and use taxes were
19 paid on all materials, may presume that fifty percent of the cost
20 of the improvement was for materials annexed to real estate on
21 which the tax was paid.

22 ~~(5)(a) The credit shall be a nonrefundable credit when~~
23 ~~used against the income tax liability of the taxpayer. The credit~~
24 ~~shall be applied before any refundable credits are applied. Except~~
25 ~~as provided in subdivision (b) of this subsection, the amount of~~
26 ~~the credit that may be used in any taxable year shall not exceed~~
27 ~~fifty percent of the income tax liability of the taxpayer reduced~~
1 ~~by all other nonrefundable credits except the credits prescribed in~~
2 ~~section 77-4105.~~

3 (b) For any taxpayer receiving credit in an amount
4 calculated pursuant to subsection (3) of section 77-27,188, the
5 amount of the credit that may be used in any taxable year shall not
6 exceed the amount of the income tax liability of the taxpayer
7 reduced by all other nonrefundable credits except the credits

8 prescribed in section 77-4105.

9 (6) The credit that is not used against liabilities
10 incurred in the taxable year in which such credit was first
11 allowable may be carried over and used against the liabilities
12 incurred in the five immediately succeeding taxable years. The
13 credits carried over shall be used in the order in which they were
14 first allowed and before any additional credit allowable in a
15 current taxable year may be used.

16 (5) (7) No claim for refund of sales and use taxes under
17 this section may be filed prior to January 1, 1989.

18 (6) (8) Credits distributed to a partner, limited
19 liability company member, shareholder, or beneficiary under section
20 77-27,194 may ~~only~~ be used against the income tax liability of the
21 partner, member, shareholder, or beneficiary receiving the credits.

22 Sec. 6. Section 77-27,188.02, Revised Statutes

23 Supplement, 2002, is amended to read:

24 77-27,188.02. If the taxpayer does not maintain the
25 ~~minimum~~ increases in the level of investment and employment
26 ~~required~~ described in section 77-27,188 to create a credit for at
27 least ~~two~~ three years after the year for which the credit was first
1 allowed:

2 (1) ~~The the~~ taxpayer shall lose ~~one-third of the amount~~
3 ~~of all used and unused credits. The for each year that the~~
4 ~~taxpayer has not maintained the required level of investment and~~
5 ~~employment; and~~

6 (2) ~~During the subsequent two years, the taxpayer shall~~
7 ~~repay to the state one-third of the amount of the credit used for~~
8 ~~each year that the taxpayer has not maintained the required level~~
9 ~~of investment and employment used credits within one year after the~~
10 ~~failure to maintain such investment and employment.~~

11 Sec. 7. Section 77-27,189, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-27,189. (1) A qualified business means any business
14 engaged in the storage, warehousing, distribution, transportation,
15 or sale of tangible personal property or in any of the following
16 activities:

17 (a) The conducting of research, development, or testing
18 for scientific, agricultural, animal husbandry, food product, or
19 industrial purposes;

20 (b) The performance of data processing,
21 telecommunication, insurance, or financial services. For purposes
22 of this subdivision, financial services shall only include
23 financial services provided by any financial institution subject to
24 tax under Chapter 77, article 38, or any person or entity licensed
25 by the Department of Banking and Finance or the Securities and
26 Exchange Commission;

27 (c) The assembly, fabrication, manufacture, or processing
1 of tangible personal property;

2 (d) The administrative management of any activities,

3 including headquarter facilities relating to such activities; or

4 (e) Any combination of the activities listed in this
5 subsection.

6 (2) Qualified business does not include:

7 (a) Any business activity in which eighty percent or more
8 of the total sales are sales to the ultimate consumer of food
9 prepared for immediate consumption or are sales to the ultimate
10 consumer of tangible personal property which is not (a) assembled,
11 fabricated, manufactured, or processed by the taxpayer or (b) used
12 by the purchaser in any of the activities listed in subsection (1)
13 of this section; and

14 (b) Any casino. (1) A qualifying business shall mean any
15 business engaged in the activities listed in subdivisions (1)(b)(i)
16 through (vii) of this section or in the storage, warehousing,
17 distribution, transportation, or sale of tangible personal
18 property, except that qualifying business shall not include any
19 business activity in which eighty percent or more of the total
20 sales are sales to the ultimate consumer of tangible personal
21 property which is not (a) assembled, fabricated, manufactured, or
22 processed by the taxpayer or (b) used by the purchaser in any of
23 the following activities:

24 (i) The assembly, fabrication, manufacture, or processing
25 of tangible personal property;

26 (ii) The feeding or raising of livestock;

27 (iii) The conducting of research, development, or testing
1 for scientific, agricultural, animal husbandry, or industrial
2 purposes;

3 (iv) The performance of data processing,
4 telecommunication, insurance, or financial services;

5 (v) Farming or ranching;

6 (vi) The administrative management or the headquarters of
7 any of the activities listed in subdivisions (i) through (vii) of
8 this subdivision or any activity excluded solely because of its
9 retail sales; or

10 (vii) Any combination of the activities listed in this
11 section.

12 (2) A qualifying business shall also mean any individual
13 or association of individuals (a) licensed pursuant to the Uniform
14 Licensing Law to practice medicine and surgery or osteopathic
15 medicine and surgery, (b) who practice from an office located in an
16 enterprise zone designated pursuant to the Enterprise Zone Act,
17 which zone is not located within the boundaries of a city of the
18 metropolitan or primary class, and (c) whose area of practice is in
19 the primary care areas of family practice, general practice,
20 general internal medicine, general pediatrics, general surgery, or
21 obstetrics and gynecology.

22 Sec. 8. Section 77-27,190, Revised Statutes Supplement,
23 2002, is amended to read:

24 77-27,190. (1) A taxpayer shall be deemed to have a new

25 equivalent Nebraska ~~employee~~ employees when the ~~number of new~~
26 equivalent Nebraska employees hired during a taxable year ~~exceeds~~
27 ~~the number of equivalent Nebraska employees during each of the~~
1 ~~three preceding taxable years are in addition to the number of~~
2 total equivalent employees in the taxable year preceding the date
3 of application.

4 (2) Qualifying business employees who work within and
5 without this state shall be considered only to the extent they are
6 paid for work performed within this state.

7 (3) The hours worked by any person considered an
8 independent contractor or the employee of another taxpayer shall
9 not be used in the computation under this section.

10 Sec. 9. Section 77-27,191, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-27,191. (1) A taxpayer shall be deemed to have made
13 an increased investment in this state to the extent the value of
14 the property used or available for use ~~on the last day of the~~
15 ~~taxable year exceeds (a) the value of all property used or~~
16 ~~available for use on the first last day of the taxable year~~
17 previous to the date the application was filed, or (b) the average
18 investment in this state during each of the three preceding taxable
19 years, whichever is greater.

20 (2) ~~The average investment in this state shall be the~~
21 ~~average of the value of all property used or available for use on~~
22 ~~the first day of the taxable year and the last day of the taxable~~
23 ~~year.~~

24 (2) ~~(3)~~ To determine the value of property owned by the
25 taxpayer, the tax basis before allowance for depreciation shall be
26 used. To determine the value of property rented by the taxpayer,
27 the annual rent of the property shall be multiplied by eight.

1 (3) ~~(4)~~ Only investment in improvements to real property
2 and tangible personal property that are depreciable under the
3 Internal Revenue Code shall be considered.

4 (4) ~~(5)~~ Vehicles, planes, or railroad rolling stock shall
5 be excluded in determining the investment or average investment
6 under this section.

7 (6) ~~For taxable years 1987 and 1988 only, taxpayers~~
8 ~~claiming credits under section 77-27,188 shall qualify for credits~~
9 ~~to the extent allowed either under the provisions of this section~~
10 ~~as it existed after the passage of Laws 1987, LB 270, or as amended~~
11 ~~by Legislative Bill 335, Ninety-first Legislature, First Session,~~
12 ~~1989.~~

13 Sec. 10. Section 77-27,194, Revised Statutes Supplement,
14 2002, is amended to read:

15 77-27,194. The credit allowed under the Employment
16 Expansion and Investment Incentive Act shall not be transferable;
17 except in the following situations:

18 (1) Any credit allowable to a partnership, a limited
19 liability company, a subchapter S corporation, or an estate or

20 trust may be distributed to the partners, limited liability company
21 members, shareholders, or beneficiaries. Any credit distributed
22 shall be distributed in the same manner as income is distributed.
23 A credit distributed shall be considered a credit used and the
24 partnership, limited liability company, subchapter S corporation,
25 estate, or trust shall be liable for any repayment under section
26 77-27,188.02; and

27 (2) The incentives previously allowed and the future
1 allowance of incentives may be transferred when a project covered
2 by an agreement is transferred by sale or lease to another taxpayer
3 or in an acquisition of assets qualifying under section 381 of the
4 Internal Revenue Code of 1986;

5 (3) The acquiring taxpayer, as of the date of
6 notification of the Tax Commissioner of the completed transfer,
7 shall be entitled to any unused credits and to any future
8 incentives allowable under the act;

9 (4) The acquiring taxpayer shall be liable for any
10 repayment that becomes due after the date of the transfer for the
11 repayment of any benefits received either before or after the
12 transfer; and

13 (5) (2) If a taxpayer operating a qualifying business and
14 allowed a credit under section 77-27,188 dies and there is credit
15 remaining after the filing of the final return for the taxpayer,
16 the personal representative shall determine the distribution of the
17 credit or any remaining carryover with the initial fiduciary return
18 filed for the estate. The determination of the distribution of
19 credit may be changed only after obtaining the permission of the
20 Tax Commissioner.

21 Sec. 11. Section 77-27,195, Revised Statutes Supplement,
22 2002, is amended to read:

23 77-27,195. ~~(4)~~ The Tax Commissioner shall prepare a
24 report identifying the amount of investment in this state and the
25 number of equivalent jobs created by each taxpayer claiming a
26 credit pursuant to the Employment Expansion and Investment
27 Incentive Act. The report shall include the amount of credits
1 claimed in the aggregate. The report shall be issued on or before
2 March 15 of each year beginning with March 15, 1988, for all
3 credits allowed during the previous calendar year.

4 ~~(2) In the report for any year in which a taxpayer~~
5 ~~located in an enterprise zone designated pursuant to the Enterprise~~
6 ~~Zone Act claimed a credit pursuant to subsection (3) of section~~
7 ~~77-27,188, the Tax Commissioner shall identify (a) the amount of~~
8 ~~investment made in each enterprise zone by all taxpayers claiming~~
9 ~~credits, (b) the number of jobs created in each enterprise zone by~~
10 ~~all taxpayers claiming credits, (c) the number of jobs created in~~
11 ~~each enterprise zone by all taxpayers claiming credits held by~~
12 ~~residents of the enterprise zone, and (d) the average wage on an~~
13 ~~hourly basis or the average annual salary of new jobs created in~~
14 ~~each enterprise zone by all taxpayers claiming credits.~~

15 Sec. 12. This act become operative on January 1, 2004.
16 Sec. 13. Original sections 77-27,188.01, 77-27,189,
17 77-27,191, Reissue Revised Statutes of Nebraska, and sections
18 77-27,187 to 77-27,188, 77-27,188.02, 77-27,190, 77-27,194, and
19 77-27,195, Revised Statutes Supplement, 2002, are repealed.
20 Sec. 14. The following sections are outright repealed:
21 Section 13-2113, Reissue Revised Statutes of Nebraska and section
22 77-27,193, Revised Statutes Supplement, 2002."

Senators Smith and D. Pederson offered the following amendment to the
Bromm et al. pending amendment:

AM2006

(Amendments to AM2005)

- 1 1. On page 3, line 20, before the comma insert "or
2 city".
- 3 2. On page 5, line 8, strike the comma; in line 9 before
4 "or" insert ", in any city in this state with a population of less
5 than fifteen thousand inhabitants located within a county with a
6 population of less than fifty-five thousand inhabitants according
7 to the most recent federal decennial census,".

SENATOR SCHIMEK PRESIDING

Senator Beutler asked unanimous consent to bracket LB 608 until May 20, 2003. No objections. So ordered.

LEGISLATIVE BILL 598. E & R amendment, AM7137, found on page 1691, was adopted.

SENATOR CUDABACK PRESIDING

Senator Combs asked unanimous consent to be excused. No objections. So ordered.

Senator Engel moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 32 ayes, 0 nays, and 17 not voting.

Senator Chambers moved for a call of the house. The motion prevailed with 36 ayes, 0 nays, and 13 not voting.

Senator Tyson requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 30:

Aguilar	Chambers	Janssen	Mossey	Schimek
Baker	Cunningham	Jensen	Pedersen, Dw.	Stuhr
Brashear	Engel	Johnson	Pederson, D.	Stuthman
Bromm	Foley	Jones	Preister	Synowiecki
Brown	Hartnett	Kremer	Price	Tyson
Byars	Hudkins	Mines	Raikes	Vrtiska

Voting in the negative, 8:

Burling	Friend	Louden	Smith
Erdman	Landis	Schrock	Wehrbein

Present and not voting, 8:

Beutler	Cudaback	Maxwell	Quandahl
Bourne	Kruse	McDonald	Thompson

Excused and not voting, 3:

Combs	Connealy	Redfield
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Advanced to E & R for engrossment with 30 ayes, 8 nays, 8 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

Senators Burling and Quandahl asked unanimous consent to be excused until they return. No objections. So ordered.

LEGISLATIVE BILL 439. Senator Hudkins withdrew her pending amendment, AM1401, found on page 1321.

Senator Beutler asked unanimous consent to withdraw the Beutler et al. pending amendment, AM1384, printed separately and referred to on page 1304 and considered on page 1321, and replace it with his substitute amendment, AM1971. No objections. So ordered.

(Amendment, AM1971, is on file and available in the Clerk's Office, Room 2014.)

Senator Hudkins offered the following amendment to the Beutler pending amendment:

AM2008

(Amendments to AM1971)

- 1 1. Insert the following new sections:
- 2 "Sec. 16. Section 81-1101, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:

4 81-1101. The purposes of sections 11-119, 81-106,
5 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304 and
6 section 34 of this act are to:

7 (1) Provide for the development and maintenance of a
8 modern system of budgetary, inventory, and financial accounting;

9 (2) Provide for development and maintenance of such
10 modern and economical methods and systems for record keeping,
11 accounting, expenditure planning and control as may be possible
12 through timely adoption of modern technological developments;

13 (3) Provide for centralized direction of services and
14 service agencies;

15 (4) Assure the development and operation of
16 organizational and procedural innovations as may be expected to
17 provide acceptable internal control of the handling and processing
18 of public funds; and

19 (5) Focus responsibility for execution of the financial
20 policies of this state on the chief executive and provide
21 assistants having the necessary technical skills for the
22 achievement of that end.

23 Sec. 17. Section 81-1102, Reissue Revised Statutes of
1 Nebraska, is amended to read:

2 81-1102. For purposes of sections 11-119, 81-106,
3 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and 84-304 and
4 section 34 of this act, unless the context otherwise requires:

5 (1) Gender with reference to the masculine or feminine
6 gender shall be construed to apply to either or both genders;

7 (2) Executive budget shall mean the budget proposed by
8 the Governor to the Legislature as the basis of appropriations for
9 the operation of and capital outlay by state government during the
10 period covered by such budget;

11 (3) Approved budget shall mean the executive or
12 Governor's budget as modified by appropriations actions of the
13 Legislature;

14 (4) Budgetary allotments shall mean the plan of
15 expenditures, by program, subprogram, activity, or object of
16 expenditure under the approved budget for monthly or other
17 applicable periods of time within each fiscal year, to which a
18 department or agency may be held during such period of time within
19 the fiscal year;

20 (5) Accrual system shall mean the recording of revenue
21 when earned and the recording of expenditures as soon as they
22 result in liabilities, notwithstanding the fact that the receipt of
23 the revenue or payment of the expenditure may take place, in whole
24 or in part, in another accounting period;

25 (6) Double entry system shall mean a system of
26 bookkeeping which requires for every entry made to the debit side
27 of an account or accounts an entry for a corresponding amount or
1 amounts to the credit side of another account or accounts resulting
2 in a self-balancing accounting system;

- 3 (7) Disbursement shall mean payment from the state
4 treasury;
- 5 (8) Expenditure shall mean, when an accrual system has
6 been established, total liability incurred by contract, purchase
7 order, or payroll commitments or as otherwise provided by law,
8 whether or not related disbursement has been made from the state
9 treasury, and shall mean, until an accrual system has been
10 established, disbursements from the state treasury;
- 11 (9) Revenue shall mean, when an accrual system has been
12 established, additions to assets which do not increase any
13 liability or represent the recovery of an expenditure or
14 disbursement or any part thereof or the cancellation of liabilities
15 without a corresponding increase in other liabilities or a decrease
16 in assets. Until an accrual system has been established, this term
17 shall mean additions to cash in the state treasury or for deposit
18 in the state treasury only;
- 19 (10) Receipts shall mean cash received, unless otherwise
20 qualified;
- 21 (11) Budgetary accounting shall mean a system of accounts
22 designed to reflect budget operations and conditions such as
23 estimated revenue, appropriations, and encumbrances as distinct
24 from proprietary accounts designed to show the status of the
25 assets, liabilities, and surplus of the state and its departments
26 and agencies;
- 27 (12) Encumbrances shall mean charges to appropriation
1 accounts to reflect obligations for which a part of the
2 appropriation is reserved and which shall cease to be encumbrances
3 when paid or when an actual liability is established in a
4 proprietary account;
- 5 (13) Financing agreement shall mean any bond,
6 lease-purchase obligation, installment sales contract, or similar
7 financial arrangement, for a period greater than one year, which is
8 entered into by the state or any agency, board, or commission
9 thereof, not including the University of Nebraska or state
10 colleges, in accordance with the Constitution of Nebraska and
11 statutes of this state, relating to capital construction, real
12 property acquisition, and personal property acquisition;
- 13 (14) Proprietary account shall mean those accounts
14 designed to show actual financial position and operations such as
15 actual assets, liabilities, surplus, revenue, and expenditures, as
16 distinguished from budgetary accounts;
- 17 (15) Program shall mean a major operation of the state
18 government directed toward the achievement of a definite legal
19 objective and which, in most instances, could be carried on
20 independently of other major operations of the state as defined and
21 described in the accounting and budgeting manuals on file in the
22 office of the Director of Administrative Services;
- 23 (16) Subprogram shall mean one or more operations of a
24 department or agency of the state designed jointly to accomplish a

25 major program objective as defined in the accounting and budgeting
26 manuals on file in the office of the Director of Administrative
27 Services;

1 (17) Activity shall mean one or more operations of a
2 department or agency of the state designed jointly to accomplish
3 the objective of a subprogram to which it is related as defined in
4 the accounting and budgeting manual on file in the office of the
5 Director of Administrative Services;

6 (18) Staffing pattern shall mean the number of positions
7 in each class and the specific classes of positions as may be
8 authorized for each department or agency for such department or
9 agency programs, subprograms, and activities;

10 (19) Approved project shall mean any acquisition of land
11 or buildings, any construction or major remodeling of new or newly
12 acquired buildings or structures or of existing state-owned
13 buildings or structures, excluding state highways or state roads or
14 aeronautical projects, or any additions to buildings or structures
15 of land owned by the state or its departments or agencies for which
16 an appropriation or other act of the Legislature makes provision;

17 (20) Machine time shall mean the hours or fractions
18 thereof of operation of each component of a machine data processing
19 system together with the hours or fractions thereof of machine
20 operator time for each such component devoted to the production of
21 a report or tabulation or the processing of data necessary to such
22 production and shall also include a proportional reflection of the
23 hours or fractions thereof of supervisory time so that all costs of
24 operation of the information management services division may be
25 reflected in billings to benefiting departments or agencies;

26 (21) Budget request shall mean the complete recitation,
27 on forms prescribed by the budget division and in the manner
1 prescribed by such division, of the operating and construction
2 funds requests of a department or agency for the biennium next
3 following the then current biennium;

4 (22) Department shall mean the Department of
5 Administrative Services; and

6 (23) Director shall mean the Director of Administrative
7 Services.

8 Sec. 19. Section 81-1108, Revised Statutes Supplement,
9 2002, is amended to read:

10 81-1108. The Department of Administrative Services shall
11 fulfill the functions in the administration of state government of
12 fiscal control, of centralizing services, of personnel services,
13 and of risk management. There shall be separate divisions within
14 the department to assist in fulfilling these functions. The
15 divisions shall be the accounting division and the budget division
16 in the area of fiscal control, the information management services
17 division, materiel division, state building division, and division
18 of communications in the area of centralized services, the
19 personnel division and the Division of Employee Relations in the

20 area of personnel services, and the risk management and state
21 claims division in the area of risk management. The Director of
22 Administrative Services shall appoint a separate administrator as
23 head of each division other than the Division of Employee
24 Relations. The director shall have the responsibility and
25 authority for directing and coordinating the programs and
26 activities of the several divisions and shall be empowered to
27 remove the administrators of any of the several divisions other
1 than the Chief Negotiator at his or her discretion. The director
2 shall have the power to delegate authority for administration of
3 sections 81-1101 to 81-1189 and 81-1301 to 81-1391 and section 34
4 of this act and the Risk Management Program to any of the division
5 heads as he or she may deem appropriate except as otherwise
6 provided by law.

7 Sec. 24. Section 81-1108.22, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-1108.22. (1) The division shall have the
10 responsibility of providing office space in leased and state-owned
11 buildings in the proximity of the State Capitol and in other
12 locations.

13 (2) When any board, agency, commission, or department of
14 the state government not otherwise specifically authorized by law
15 desires to use funds available for the purpose of renting office
16 space outside of the State Capitol, it shall submit a request to
17 the Director of Administrative Services accompanied by a
18 certificate from the Committee on Building Maintenance that there
19 is no state-owned property which is adequate or which through
20 cost-effective renovation, as determined by the division, could be
21 made adequate to meet the needs of the board, agency, commission,
22 or department. If the director approves the lease, the terms and
23 location shall be approved by the director and the administrator in
24 writing and the leases shall be entered into and administered by
25 the administrator on behalf of the board, agency, commission, or
26 department. A copy of all such lease contracts shall be kept on
27 file by the state building division and shall be open to inspection
1 by the Legislature and the public during normal business hours.

2 (3) The administrator shall develop a system of charges
3 to cover basic rental, maintenance, renovations, and operation of
4 such leased and owned properties. The charges to state agencies,
5 boards, commissions, or departments of state government shall be
6 paid from funds available for the purpose of renting space on a
7 regular basis and placed, as applicable, in the State Building
8 Revolving Fund; ~~which fund is hereby created,~~ and the State
9 Building Renewal Assessment Fund. The administrator shall make
10 payments for basic rentals, renovations, and maintenance and
11 operational costs of all leased and owned buildings from the State
12 Building Revolving Fund, except for expenses relating to security
13 as provided by the Nebraska State Patrol on state-owned or leased
14 buildings and grounds in Lincoln, Nebraska.

15 (4) The charges for such leased and owned properties
16 shall only be adjusted by the administrator on July 1. Prior to
17 any adjustment in the system of charges, the Department of
18 Administrative Services, on or before December 1 of the year
19 preceding the effective date of such adjustment, shall provide
20 written notification to the Committee on Building Maintenance, the
21 Clerk of the Legislature, and the Legislative Fiscal Analyst of the
22 proposed adjustment to the system of charges.

23 (5) Commencing on April 18, 1992, all leases of real
24 property entered into by any state agency, board, commission, or
25 department shall be subject to this section. Leases held by a
26 state agency, board, commission, or department on such date shall
27 be valid until the lease contract is terminated or is subject to
1 renewal. The division shall monitor all such leases and determine
2 when the lease is subject to renewal. Once the determination is
3 made, the division shall cancel the lease as of the renewal date
4 and shall treat the need of the agency, board, commission, or
5 department as an original request for space and subject to this
6 section. This subsection shall not apply to (a) state-owned
7 facilities to be rented to state agencies or other parties by the
8 University of Nebraska, the Nebraska state colleges, the Department
9 of Aeronautics, the Department of Roads, and the Board of
10 Educational Lands and Funds, (b) facilities to be leased for use by
11 the University of Nebraska, the Nebraska state colleges, and the
12 Board of Educational Lands and Funds, (c) facilities to be leased
13 for nonoffice use by the Department of Roads, or (d) facilities
14 controlled by the State Department of Education, which were
15 formerly controlled by the Nebraska School for the Visually
16 Handicapped, to be rented to state agencies or other parties by the
17 department.

18 Sec. 33. Section 81-1109, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 81-1109. The Director of Administrative Services shall
21 be responsible to the Governor for provision of technical
22 assistance, advice, and information concerning the financial and
23 administrative operations of all agencies of the state, for
24 provision of technical assistance and advice on the preparation of
25 the Governor's budget, otherwise referred to in sections 11-119,
26 81-106, 81-1101 to 81-1118, 81-1121, 81-1170.01, 81-1170.02, and
27 84-304 and section 34 of this act as the executive budget, and for
1 administration of the approved budget within the limits of
2 appropriations provided except as otherwise provided by law. He or
3 she shall be responsible to the Governor for the provision of
4 current reports of the financial condition of the state and each of
5 its departments and agencies and for the provision of timely
6 recommendations for dealing with financial, management, and
7 organizational problems affecting the administration of the
8 business of the state and its departments and agencies.

9 Sec. 34. The State Building Revolving Fund is created.

- 10 The fund shall be administered by the State Building Administrator.
11 The fund shall consist of rental charges and other receipts
12 collected pursuant to contractual agreements between the state
13 building division and other entities as authorized by law. The
14 fund shall be used to support the operations of the state building
15 division as provided by law. That portion of rental revenue
16 collected from state-owned or leased buildings and grounds in
17 Lincoln, Nebraska, relating to security assessments shall be
18 administratively transferred from the State Building Revolving Fund
19 to the Nebraska State Patrol Cash Fund on a periodic basis. Any
20 money in the State Building Revolving Fund available for investment
21 shall be invested by the state investment officer pursuant to the
22 Nebraska Capital Expansion Act and the Nebraska State Fund
23 Investment Act.
24 Sec. 36. Sections 16, 17, 19, 24, 33, 34, and 38 of this
25 act become operative on July 1, 2003. The other sections of this
26 act become operative on their effective date.
27 Sec. 38. Original sections 81-1101, 81-1102, 81-1108.22,
1 and 81-1109, Reissue Revised Statutes of Nebraska, and section
2 81-1108, Revised Statutes Supplement, 2002, are repealed."
3 2. On page 33, line 17, strike "To" and insert "The
4 Nebraska State Patrol shall".
5 3. Renumber the remaining sections and correct internal
6 references accordingly.

Senator D. Pederson asked unanimous consent to be excused until he returns. No objections. So ordered.

SPEAKER BROMM PRESIDING

Senator Hudkins moved for a call of the house. The motion prevailed with 18 ayes, 0 nays, and 31 not voting.

The Hudkins amendment was adopted with 38 ayes, 0 nays, 5 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senators Friend and Raikes asked unanimous consent to be excused. No objections. So ordered.

Senator Beutler moved for a call of the house. The motion prevailed with 27 ayes, 0 nays, and 22 not voting.

The Beutler amendment, as amended, was adopted with 25 ayes, 7 nays, 9 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

Senator Vrtiska asked unanimous consent to be excused. No objections. So ordered.

SENATOR CUDABACK PRESIDING

Senator Hudkins withdrew her pending amendment, AM1106, found on page 1205.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 439A. Senator Hudkins asked unanimous consent to pass over. No objections. So ordered.

LEGISLATIVE BILL 19. Senator Brashear renewed his pending amendment, AM1527, found on page 1574.

The Brashear amendment was adopted with 27 ayes, 0 nays, 14 present and not voting, and 8 excused and not voting.

Advanced to E & R for engrossment.

Senator Landis asked unanimous consent to be excused. No objections. So ordered.

LEGISLATIVE BILL 48. Senator Brashear asked unanimous consent to pass over. No objections. So ordered.

LEGISLATIVE BILL 187. E & R amendment, AM7037, found on page 545, was adopted.

Senator Baker offered the following amendment:
(Amendment, AM1981, is on file and available in the Clerk's Office, Room 2014.)

Senator Baker moved for a call of the house. The motion prevailed with 22 ayes, 0 nays, and 27 not voting.

The Baker amendment was adopted with 39 ayes, 0 nays, 1 present and not voting, and 9 excused and not voting.

Advanced to E & R for engrossment.

The Chair declared the call raised.

Senator Brashear asked unanimous consent to be excused. No objections. So ordered.

LEGISLATIVE BILL 101. Senator Beutler renewed his pending amendment, AM0372, found on page 565.

The Beutler amendment was adopted with 37 ayes, 0 nays, 2 present and not voting, and 10 excused and not voting.

Advanced to E & R for engrossment.

AMENDMENTS - Print in Journal

Senator Raikes filed the following amendment to LB 574:
AM2002

(Amendments to Final Reading copy)

- 1 1. Insert the following new sections:
- 2 "Sec. 41. Sections 21 and 42 of this act become
- 3 operative on July 1, 2003. The other sections of this act become
- 4 operative on their effective date.
- 5 Sec. 42. Original section 9-812, Revised Statutes
- 6 Supplement, 2002, as amended by section 1, Legislative Bill 367,
- 7 Ninety-eighth Legislature, First Session, 2003, is repealed."
- 8 2. On page 2, line 3, after the last semicolon, insert
- 9 "to provide operative dates;"
- 10 3. On page 42, line 25, after the first comma insert
- 11 "and"; and strike beginning with "and" in line 27 through line 28.
- 12 4. On page 43, strike line 1 and insert "are".
- 13 5. Renumber the remaining sections accordingly.

Senator Bromm filed the following amendment to LB 608:
AM2014

(Amendments to AM2005)

- 1 1. On page 3, line 15, after the comma insert "and"; and
- 2 strike beginning with the comma in line 16 through "project" in
- 3 line 17; and in line 20 before the comma insert "or enterprise
- 4 zone".
- 5 2. On page 10, after line 21 insert the following new
- 6 subsection:
- 7 "(7) For taxpayers who met the job and investment
- 8 thresholds of the Employment Expansion and Investment Incentive Act
- 9 for a tax year beginning before January 1, 2004, subsection (6) of
- 10 this section and subdivision (1)(b) of section 77-27,188, as such
- 11 section existed immediately prior to such date, shall continue to
- 12 apply to such taxpayer. The changes made by this Legislative bill
- 13 shall not preclude a taxpayer from receiving the tax incentives
- 14 earned prior to January 1, 2004.".

UNANIMOUS CONSENT - Add Cointroducer

Senator Schimek asked unanimous consent to have her name added as cointroducer to LB 643. No objections. So ordered.

VISITORS

Visitors to the Chamber were 29 sixth-grade students and teachers from St. Isidore School, Columbus.

ADJOURNMENT

At 7:17 p.m., on a motion by Senator Janssen, the Legislature adjourned until 9:00 a.m., Tuesday, May 20, 2003.

Patrick J. O'Donnell
Clerk of the Legislature